



# Influencing the development and implementation of policy and legislation in the security and justice sectors

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## Question

*How necessary is conducive policy and legislation to progress in security and justice programming? What are the lessons on effective ways of influencing policy and legislation in the security and justice sectors?*

## Contents

1. Summary
2. Introduction
3. Conducive policy and legislation as a condition of progress
4. Lessons on influencing policy and legislation
5. Examples of policy change
6. References

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## 1. Summary

The literature reviewed for this report suggests that a conducive policy and legal environment is important but not sufficient to progress in security and justice programming, and that a decision on how essential it is will be highly context-specific. Effective policy influence requires attention to a number of complementary factors, including:

- the level of ownership within both state and society of the reform process;
- the sequencing of reforms;
- the skills and mechanisms which enable a rapid response to emerging opportunities;
- the degree of trust and mutual interest that can be established between stakeholders;
- the critical role played by individuals in influential positions, as well as the mechanisms to institutionalise those relationships in the interests of sustaining reform.

Policy change is likely to require corresponding action to influence attitudes and behaviours and the social norms that underpin them if implementation is to be achieved. Moreover, conflict-affected environments are inherently uncertain and unpredictable. For both these reasons a long-term perspective is important, married to a sense of realism about what is possible to achieve in the short to medium term, as well as the capacity to adapt and respond flexibly when conditions allow. However, it is also possible for individuals – both within government and outside it – to push through reforms in inhospitable environments if they have the requisite skills, knowledge, and will to do so.

The evidence base for security and justice programming in general is considered weak. Important gaps that are relevant to the focus of this paper include empirical evidence about how change occurs, and discussion of outcomes that are difficult to measure, such as changes in the incentives necessary to achieve and implement reforms. Reform processes tend to be analysed in general terms: if a specific policy or legislative change is discussed, the factors that contributed to that change are rarely explained. Gender is addressed primarily in terms of the specific issue of violence against women rather than as part of generic policy reforms.

## 2. Introduction

Policies and laws are part of the architecture that governs the security and justice system. Bakrania with Haider (2016, p.16) describe its three pillars and their importance:

- **National management and decision-making structures**, such as National Security Councils, which coordinate decision-making across the various institutions that contribute to security management, within government and outside it.
- **National security policies and strategies**. Policy development processes can be opportunities to instigate long-term change as well as entry points for identifying the security and justice assistance required.
- **Constitutional and legal provisions**. Laws may be discriminatory, outdated, or incomplete, and in some cases may need bringing into line with constitutional provisions.

The concepts of security and justice have imprecise boundaries since their outcomes are determined by a wide range of social, economic, and cultural factors (Bakrania with Haider, 2016, p. 23; ICAI, 2015, p. 10; WYG, 2017a, p. 56). The likely policy reforms required are

therefore not necessarily limited to the security and justice sectors (Hendricksen, 2010, p. 211). Moreover, while security and justice are clearly core functions of the state, they are not exclusive to it. Most security and justice for ordinary people in Africa is not provided through the state (Detzner, 2017, p. 119), but rather through a range of institutions such as customary authorities or militias (Baker, 2010). Oversight is also shared: while formal oversight may in theory rest with parliaments, civil society contributes by facilitating public debate and by shaping and monitoring public policy (Bakrania with Haider, 2016, p.16).

The evidence base for security and justice programming as a whole is generally considered weak (Jackson et al, 2019, p. 30). Specific gaps in the literature relevant to a discussion of policy and legal reform include the following:

- Empirical evidence about success factors and about how change occurs, specifically how external interventions interact with local institutions and processes to influence outcomes (Bakrania with Haider, 2016, p. 23; Gisselquist, 2015, p. 1-2; Eckhard, 2016, p. 21)
- Discussion of outcomes that are difficult to measure, such as changes in the political will necessary to enact reforms (Jackson et al, 2019, p. 8)
- Evidence about how laws are interpreted, applied, and complied with, since what exists on paper may not reflect the empirical situation (Jackson, forthcoming, p. 6).

This review has additional limitations. First, the literature tends to discuss reform processes in general terms rather than isolate particular policy or legislative changes, which are the focus of the research question. Second, while studies may describe activities that led to a particular reform, they rarely analyse how that change was achieved. Third, and with regard to the dilemma posed by the first part of the research question, the competing scenarios considered in programme design are rarely committed to paper and publicly available.<sup>1</sup>

Some case studies of policy reforms and the conditions that made them possible were found in evaluation reports, and a selection of these are presented in section 5. However, reliable evidence of the impact of policy change, particularly the effectiveness of policy implementation, is unlikely to be evident within the life of a programme and therefore within the scope of its evaluation (WYG, 2017a, p. 55). There are also challenges associated with the evaluation of advocacy in general and security sector programming in particular, with the result that these issues are thinly represented in evaluation databases. For example:

- An evidence gap mapping of impact evaluations associated with the five Peacebuilding and Statebuilding Goals<sup>2</sup> revealed little evidence in most categories, and no impact evaluations in the specific area of security sector reform (Cameron et al, 2015).
- In their review of 56 evaluations of advocacy initiatives, Naeve et al (2017) distinguish between policy advocacy (targeting changes in policy or legislation) and advocacy that seeks changes in attitudes and behaviours, and discuss the particular methodological challenges in evaluating the former.

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<sup>1</sup> An exception is the discussion of options set out in a DfID business case, although these would generally not be at the level of specific interventions or strategies.

<sup>2</sup> Legitimate politics, security, justice, economic foundations, and revenues and services.

- Ball (2014, p. 38) comments on the difficulty in measuring governance outcomes, which generally require a combination of policy, institutional and behavioural change. Further, she cautions that while the outputs of security sector reform may be technically satisfactory on paper, they may not achieve their anticipated results if inadequate attention is given to facilitating behaviour change.

### 3. Conducive policy and legislation as a condition of progress

The first part of the research question concerns the extent to which a conducive policy and legal framework is essential to progress. It is based on a scenario in which an agency may have identified a policy or law as an impediment to their objectives and therefore assume that they should necessarily seek to influence it when in practice it may be challenging to do so; they may then question the degree to which they should direct their efforts to this area. The question seeks to test this assumption.

The literature reviewed for this paper does not provide a clear answer. However, it suggests a number of factors that might be considered in reaching a decision, which will always be context-specific (Nathan, 2007).

**The choice of strategy in programme design is an important but secondary question.** A recent review of the UK Aid security and justice portfolio found that it was most convincing when it sought to address specific challenges experienced in particular locations by particular groups, and when this was a central feature of the programme (rather than, for example, outsourced to NGOs through mechanisms such as challenge funds) (ICAI, 2015, pp. 38-39). The review argued that a problem-solving approach to these challenges led more naturally to a broader range of partnerships and entry points, and to a multi-disciplinary and multi-layered response in which policy, legal and institutional reform might all have their place, alongside direct engagement with affected citizens (ICAI, 2015, p. 38). The choice of strategy (in the case of this paper being whether and how to pursue policy or legal reform) therefore flows from this analytical process.

Denny and Domingo (2015) also discuss the use of problem-driven approaches in security and justice programming, noting that these can improve both its relevance and effectiveness. However, the authors caution that they do not make it more easy, because the deeply political nature of security and justice makes these ‘difficult arenas in which to bring about change’ (p.16). They raise two other concerns: first, that who defines the problem is also a political issue (p. 6), and second, that localised problems are sustained by wider political dynamics and incentives (p. 10).

**Policy change may be necessary, but it is unlikely to be sufficient.** An evaluation of the influence exerted by the Nigeria Stability and Reconciliation Programme noted that policy change requires complementary measures, including dedicated resources to implement the policy, a framework to monitor its implementation, and significant government buy-in and changed practice (WYG, 2017a, p. 55). An evaluation of four of DfID’s state-level programmes in Nigeria also found that upstream advocacy (such as the preparation of new legislation) delivered limited results without corresponding attention paid to downstream implementation, such as the quality and effectiveness of public expenditure (Ecorys et al, 2017, p. 105).

**The operating context and policy environment may not prove to be as significant an obstacle as anticipated.** A mid-term evaluation of the Africa Regional Empowerment and Accountability Programme,<sup>3</sup> whose implementing partners operated in 36 countries, found that the external context was not the decisive factor in civil society's ability to exercise influence on policy. While success was more likely in countries where governments create space for non-state actors and where the policymaking process is more transparent, these conditions were not essential. Rather, **effectiveness depended more on the advocacy skills and political acumen of the organisations concerned** (Coffey, 2015, pp. 24-25). Further, the level of commitment to reform is not static, and may rise or fall within the life of a single administration (Ecorys et al, 2017, p. 107).

**A sense of realism about the potential for change in uncertain and challenging environments is important, but without abandoning long-term goals.** The ICAI review found that the most convincing programme designs were those that had relatively modest objectives, linked to specific problems, rather than those that sought to achieve ambitious institutional reforms (ICAI, 2015, p. 15). Booth and Chambers (2014, p. 5) note that political systems are shaped almost entirely by domestic forces and historical path dependencies, and therefore that the influence of external programmes is likely to be slight. Similarly, Bryden and Chappuis (2015 p. 4) argue that the opportunities and constraints for reform can only be understood by recognising the 'deep historical currents' that shape security at the national level. Despite these challenges, Eckhard (2016, p. 42) advises donors not to lose sight of the long-term goal of democratic control of the security sector, even if it is politically unrealistic in the short term.

## 4. Lessons on influencing policy and legislation

The lessons in this section are drawn from literature that discusses not just the process of bringing about a particular policy or legal change, but also the wider enabling environment within which such reforms might become possible.

**Local ownership and leadership is key.** Reforms are more likely to be sustainable if they are shaped and driven by local actors (Nathan, 2007). Laws and regulations are more likely to be implemented if they are drafted through a locally supported process, even if this takes time and does not entirely meet external expectations (Eckhard, 2016, pp. 31-32). Bryden and Chappuis (2015, p. 7) note that the only sustainable shifts in governance of the security sector have been with strong national leadership of the reform agenda. A national vision for the security of both states and citizens needs to emerge organically, and countries should be given the space to do this (Hendricksen, 2010, p. 211). However, one of the implications of local ownership may be engaging with organisations which do not share international norms and standards but may still enable some degree of long-term influence (Jackson in Bärwaldt, 2018, p. 42).

**Local ownership means national ownership, not just government ownership.** In her review of security sector reform programmes in Africa since the mid-1990s, Detzner (2017) identifies

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<sup>3</sup> The programme is concerned with public sector accountability in general, rather than security and justice in particular.

only three clear examples of success:<sup>4</sup> Sierra Leone, South Africa and Ethiopia. Common to all three was a high degree of consensus between government and society that significant reform was needed and about the priorities for reform. Mobilising local political demand for reform at an early stage may therefore be more important for success than external pressure (Jackson, forthcoming).

**The role of individuals in effecting change is key.** Eckhard (2018) argues that long-term change becomes possible when reformers in government rise to positions where they can enable systemic change. Those interested in supporting reform therefore need the flexibility and preparedness to respond to these opportunities when they arise. Investing in relationships is important, but in ways that respect the cultural importance attached to age and seniority (Eckhard, 2018, p. 70). In their review of West African experiences of security sector governance, Bryden and Chappuis (2015, p. 12) note that a decisive factor in the success of reform processes was the disposition of senior leaders in government, who often exercised influence through the power of words and dialogue. Albrecht and Jackson (2014, pp. 91-93) illustrate the importance of the human factor in Sierra Leone's security sector reform process. First, the head of the Office of National Security was personally influential in ensuring broad participation in the review, including by Paramount Chiefs, who have local security responsibilities but were often ignored in such reforms. Second, the Sierra Leone team was stable over time, compared with the frequently changing UK team, which may have deepened local ownership.

**However, personal relationships need some degree of institutionalisation if policy change is to be sustained.** One of the two factors identified as key to the policy influence achieved by the Nigeria Stabilisation and Recovery Programme was the strong relationships built between the advocacy platforms and individual champions of change in state institutions. These individuals create openings for change which may then be threatened by their subsequent departure. Measures which systemise the relationships that have been established are therefore important, such as documenting joint strategies and agreements (WYG, 2017a).

**Multi-stakeholder structures can allow mutual interests to emerge.** The political economy analysis carried out by the Pyoe Pin programme in Myanmar revealed that stakeholders were focused on their differences rather than on what they had in common. The programme supported the formation of a multi-stakeholder platform, made up of politicians, civil society, government officials, lawyers, the private sector, and fisherfolk communities, which subsequently played an important role in drafting new fisheries legislation. A similar multi-stakeholder body is now working with the ministry on a national policy framework (Christie and Green, 2018). In Nigeria, the SAVI programme<sup>5</sup> showed that relationships between stakeholders can change in unexpected ways. In a non-adversarial setting, where there has been effort to build trust, previously unrealised mutual interests may be discovered (Booth and Chambers, 2014, pp. 21-24).

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<sup>4</sup> The author uses the term 'success' cautiously to mean not the achievement of some final goal, but rather 'significant and sustained improvement in day-to-day security conditions for the majority of the people within a state when compared to prior conditions'. (Detzner, 2017, p. 123).

<sup>5</sup> The programme is concerned with public sector effectiveness in general, rather than security and justice in particular.



**However, multi-stakeholder platforms are not without risks.** While Bryden and Chappuis (2015, p. 148) also discuss the importance of dialogue in building trust and shared vision across both state and society, they note that **civil society should not be assumed to be always a constructive partner in reform**. Christie and Green (2018, p. 15) provide another cautionary note, which is that focusing on aligning incentives between groups ('win-wins') may inadvertently privilege the powerful and exclude the marginalised *within* such groups.

**Once mutual interests are established, joint action may become possible.** The SAVI programme demonstrated the potential in moving away from an adversarial advocacy approach, and in so doing it challenged the conventional framing of state-society relations in terms of demand and supply. Instead, it facilitated dialogue and collective action between stakeholders on the basis of their mutual interests, in some cases across state/society boundaries (Booth and Chambers, 2014). This approach has been sustained and refined in the ongoing PERL programme in Nigeria,<sup>6</sup> which applies a fluid understanding of partnership and works with those who demonstrate genuine engagement with an issue, regardless of their institutional profile or location. For example, former members of the National Assembly were enlisted to advocate for a controversial constitutional amendment on local government autonomy by lobbying Governors and members of the State Houses of Assembly (Punton and Burge, 2018, pp. 18-19).

**The assumption that access to information and stronger evidence will lead to policy change does not necessarily hold true.** The decisive factor may be the nature of the relationships built up around a policy issue and the way these are used to effect change (WYG, 2017a, p. 49). Moreover, the role played by evidence in policy-making is unclear: policy-making is rarely 'evidence-based', but may be strongly 'evidence-informed' if those advocating it act effectively (Mayne et al, 2018).

**Careful use of language can help mitigate potential tensions between stakeholders.** This is particularly pertinent given the sensitivities that surround the security sector. For example, a modest and cautious approach characterised the first phase of the Netherlands-funded Security Sector Development Programme in Burundi, which initially used the phrase 'cross-cutting issues' rather than the more politically charged 'governance' (Ball, 2014, p. 33). Similarly, staff of the Pyoe Pin programme in Myanmar realised that parliamentarians were uncomfortable with proposed 'consultations' in fishing communities and changed this to the less threatening 'hearings'. Once over this hurdle, the politicians came to value these exchanges (Christie and Green, 2018, p. 10).

**The sequencing of policy or legal change is important.** The literature on security sector reform emphasises the importance of taking a holistic approach, and cautions against attempting to reform one part of an inter-connected set of institutions. However, careful sequencing then becomes important – for example, offering training in security sector oversight to parliamentarians and civil society *before* the policy or legislative change actually grants them those powers (Detzner, 2017, p. 124).

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<sup>6</sup> Partnership to Engage, Reform and Learn.

## 5. Examples of policy change

This section contains four instances of policy change in the security and justice sectors that illustrate the lessons discussed in the previous section.

### **Developing Nigeria's National Security Strategy<sup>7</sup>**

Prior to 2012, Nigeria's security strategy was narrowly focused and security management was regarded as the exclusive remit of the military. This excluded the contribution of traditional and religious institutions, civil society organisations, women, and research institutions. By 2016, a more inclusive and comprehensive National Security Strategy (NSS) had been developed and received presidential endorsement, informed by a series of stakeholder discussions. The document demonstrated a broader understanding of Nigeria's multiple security threats and the importance of a people-centred approach; it also recognised gender security for the first time.

These outcomes were the result of a close partnership between the Nigeria Stability and Reconciliation Programme (NSRP) and three organisations: the Office of National Security (ONSA), the National Institute for Policy and Strategic Studies (NIPSS), and the National Defence College. The NSRP's contribution was to provide the space where different actors could come together and work in a problem-driven and coordinated way. Specifically, it:

- Engaged influential, committed 'agents of change' in NIPSS and ONSA
- Brought together a wide range of state and non-state stakeholders
- Enhanced communication and coordination between them
- Enabled them to better understand each other's remit.

The NSRP provided financial and technical support to the process, but it also helped with stakeholder and process management, achieving a successful balance between discretion and neutrality (in order to secure acceptance) and proactivity (to keep things moving).

While those interviewed for the evaluation agreed that the policy change implied by the new NSS is a positive one, some civil society informants questioned the genuine nature of inclusion. Further, sustainability has been undermined by (i) changes to key personnel within government, and (ii) the lack of a monitoring plan within the NSS, or action to review it since its launch.

### **Domesticating Nigeria's National Action Plan on Women, Peace and Security<sup>8</sup>**

The Kano Women's Peace and Security Network (KWPSN) is one of eight state-level civil society networks that aim to domesticate Nigeria's National Action Plan on Women, Peace and Security (UN resolution 1325) into state-level policy. Prior to the work of the NSRP and the KWPSN, the issue of violence against women was not high on the political agenda and civil society efforts were not coordinated. There was a culture of silence around violence against women, and negligible prosecutions of cases of sexual violence.

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<sup>7</sup> Source: WYG International Ltd. (2017a, 11, 50-51), (2017b, 75-90)

<sup>8</sup> Source: WYG International Ltd. (2017a, 11, 48-59), (2017b, 134-154)



The issue now has a higher political and media profile in Kano, where the State Action Plan was approved in May 2016. The KWPSN, and other civil society actors, used a combination of grassroots mobilisation, individual lobbying, media presence, and network-building. The evaluation suggests that the decisive factor in achieving change was the nature of the personal relationships built up around the issue, rather than the use of evidence.

However, these relationships tend to be personalised rather than institutionalised. The KWPSN positioned itself well to take advantage of a policy window that opened with the appointment of a sympathetic Commissioner and Governor in 2015, and was formally incorporated into the Implementation Committee for the State Action Plan, chaired by the Ministry of Women's Affairs, but this window closed again in 2016 when those individuals were replaced. Progress slowed, and the resources needed to implement the plan were not allocated.

This example illustrates that policy changes are fragile, dependent on factors outside the control of any programme. Creating the environment to take advantage of favourable conditions when they arise – such as maintaining the public profile of an issue, and sustaining civil society networks and their relationships with government – is therefore important.

### **Civil society participation in Burundi's Defence Review<sup>9</sup>**

The security sector development process in Burundi has three pillars: defence, public security, and governance. The inclusion of a separate component on governance within an overall SSR process was rare; it enabled an exclusive focus on that issue, as well as a mechanism to sensitise the other two components (Ball, 2014, pp. 21, 34).

The government initiated a Defence Review in 2010 and set up a Governance Advisory Group. This had two civil society members, both of them organisations experienced in peace and security and one of them focused on women. They were able to organise extensive public consultations and bring the findings back into the group. The inclusion of civil society actors was initially contentious for both security officials and some parliamentarians, given the level of secrecy associated with the security sector. However, over time, with expert facilitation and dialogue, the quality of interaction changed, leading to greater appreciation of the legitimate roles and responsibilities of different stakeholders in creating a secure environment.

The shift in the relationship between state and society is illustrated by two examples. First, the military hosted its first 'open day' in 2012, at which the public could visit non-sensitive sites to improve understanding. It was followed by an ethics competition the year after, in which participating military units had to organise an operation to protect the population against a particular threat. In an unprecedented development, the competition was judged by joint teams of military officers and civilians from human rights and women's organisations, rating each unit against an agreed set of ethical norms. Second, a Security Sector Reform Network was established in 2013, with joint teams (military, police, civil society) introducing the various discussion topics at its regular meetings.

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<sup>9</sup> Schirch with Mancini-Griffoli, 2015, pp. 98-99; Ball, 2014.

## South Africa's Defence and Intelligence White Papers

Nathan (2007) compares two White Papers that were produced within the same broadly favourable policy environment (a relatively strong state, democratic system, and civil society in post-apartheid South Africa) but that had different outcomes. He identifies five differences between the defence and intelligence cases which account for the more positive results achieved by the former:<sup>10</sup>

- i. **The level of detail about objectives and strategies in the final document**, and therefore the extent to which it could guide implementation.
- ii. **The nature of the drafting process**, and whether this involved different decision-makers and allowed their different interests to be resolved.
- iii. **The quality of ministerial leadership**, and their oversight of the drafting process and subsequent implementation.
- iv. **The extent of debate and scrutiny** by both the public and parliament.
- v. **The level of civil society engagement** in research and advocacy on the two issues.

The author cautions that it took eight years to prepare the Defence White Paper, carry out a Defence Review, and pass a new Defence Act, in the relatively favourable conditions of post-apartheid South Africa. In a less favourable policy environment, more time might be needed. (Nathan, 2007, p. 15)

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<sup>10</sup> Nathan declares an interest as the chief drafter of the Defence White Paper.

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